

ORDINANCE NO. 27562

AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING COMBINATION RULE 20A/IN-LIEU FEE (RULE 20B) UNDERGROUND UTILITY DISTRICT ON TAYLOR STREET FROM FIRST STREET TO TENTH STREET; JACKSON STREET FROM SEVENTH STREET TO NINTH STREET; SEVENTH STREET FROM JACKSON STREET TO TAYLOR STREET; AND SIXTH STREET FROM TAYLOR STREET TO EMPIRE STREET.

WHEREAS, by Resolution No. 72872, the City Council of San Jose set a Public Hearing on September 27, 2005 at 1:30 P.M., in the Council Chambers of the City of San Jose, City Hall, 200 E. Santa Clara Street, at the corner of Fourth and Santa Clara Streets, San Jose, to ascertain whether an Underground Utility District should be established in the area designated as "JACKSON/TAYLOR UNDERGROUND UTILITY DISTRICT" (hereinafter called "District") and more fully described and shown on EXHIBITS A-1 and A-2 hereto; and

WHEREAS, written notice of the Public Hearing has been given pursuant to Section 15.24.050 of the San Jose Municipal Code, such hearing has been duly and regularly held, and all persons interested have been given a reasonable opportunity to be heard; and

WHEREAS, the criteria to form a district as set forth in San Jose Municipal Code Section 15.24.060 include:

- a. Removal of overhead wires and placement underground will eliminate an unusually heavy concentration of poles and overhead wires within the Proposed District; and
- b. Public streets or rights-of-way within the Proposed District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic;

and;

- c. Public streets or rights-of-way within the Proposed District adjoin or pass through a civic area or public recreation area or an area of unusual scenic interest to the general public; and

WHEREAS, pursuant to Section 15.24.060 of the San Jose Municipal Code, the City Council hereby finds and determines, based on evidence presented at the Public Hearing including the memorandum from the Director of Public Works dated September 16, 2005, and attached hereto as Exhibit A-3, that the above conditions exist within the proposed district, and public necessity, health, safety, and welfare require and it is in the general public interest that existing poles and overhead wires within the District be removed therefrom and thereafter prohibited and that wires and associated facilities within the District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground; and

WHEREAS, on June 28, 2005, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15302 of the California Environmental Quality Act of 1970, as amended, under File No. PP05-148.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Jose:

SECTION 1. The City Council hereby declares that a certain area of the City of San Jose described and shown on EXHIBITS A-1 and A-2, attached hereto, made a part hereof, and incorporated herein by reference is established as an underground utility district to be designated "JACKSON/TAYLOR UNDERGROUND UTILITY DISTRICT" and orders and requires that existing poles and overhead wires within said District be removed therefrom by the operators of the utilities and thereafter prohibited and that wires and associated facilities within said District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat,

power, telephone, telegraph, communication, television, or other similar or associated service be installed underground subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San Jose Municipal Code.

SECTION 2. Existing poles and overhead wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be removed by the operators of the utilities no later than December 31, 2008.

Wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be installed underground no later than December 31, 2008.

Persons owning any property as shown on the last equalized assessment roll served by overhead service drops which are extended from poles or spans located within the District must be ready to receive light, heat, power, telephone, telegraph, communications, television, or other similar or associated service by means of underground wires and facilities no later than December 31, 2008.

SECTION 3. The City Council does hereby request that the Pacific Gas & Electric Company and SBC provide payment, computed pursuant to Rule 20 and Rule 32 respectively for the installation of no more than one hundred (100) feet (measured from the property line) of trenching, excavation, conduit installation, backfill, and surface restoration of each customer's individual service lateral to each qualifying premise affected by the District.

SECTION 4. The City Council does hereby request that the Pacific Gas & Electric Company pay, from the existing Rule 20A allocation, for the conversion of electric service panels to accept underground service, up to \$1,500 per service entrance, excluding permit fees.

SECTION 5. Within twenty (20) days of the effective date of this ordinance, the Director of Public Works shall give written notice to all affected Utilities owning, possessing, or controlling any poles or overhead wires in the district and all owners and occupants of property affected by said District as required by Sections 15.24.150 and 15.24.160 of the San Jose Municipal Code.

SECTION 6. In lieu of a notice to the Utility Companies for disconnection of service pursuant to Section 15.24.140 of the San Jose Municipal Code, the Director of Public Works may give an additional notice to any noncompliant property owners or occupants in said District pursuant to Section 15.24.170 of the San Jose Municipal Code.

SECTION 7. The Director of Public Works is hereby empowered to extend the time for any act required under this ordinance for the period of time and for the reasons set forth in Section 15.24.180 of the San Jose Municipal Code.


PASSED FOR PUBLICATION of title this 27th day of September, 2005, by the following vote:

AYES: CHIRCO, CORTESE, LeZOTTE, NGUYEN,
PYLE, REED, YEAGER, CHAVEZ


NOES: NONE

ABSENT: CAMPOS, WILLIAMS; GONZALES

DISQUALIFIED: NONE


CINDY CHAVEZ
Vice Mayor

ATTEST:


LEE PRICE, CMC

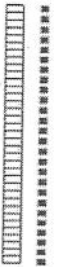
Attachments:

Exhibit A-1, Map
Exhibit A-2, Description
Exhibit A-3, Staff Memorandum

EXHIBIT A-1

Map

NOT TO SCALE:
LEGEND
DISTRICT BOUNDARY
RULE 20B PORTION
PROPERTIES REQUIRING
SERVICE CONVERSION



ADDRESS #565

CITY OF SAN JOSE
UNDERGROUND UTILITY DISTRICT
JACKSON/TAYLOR

REVISED 6/0/05

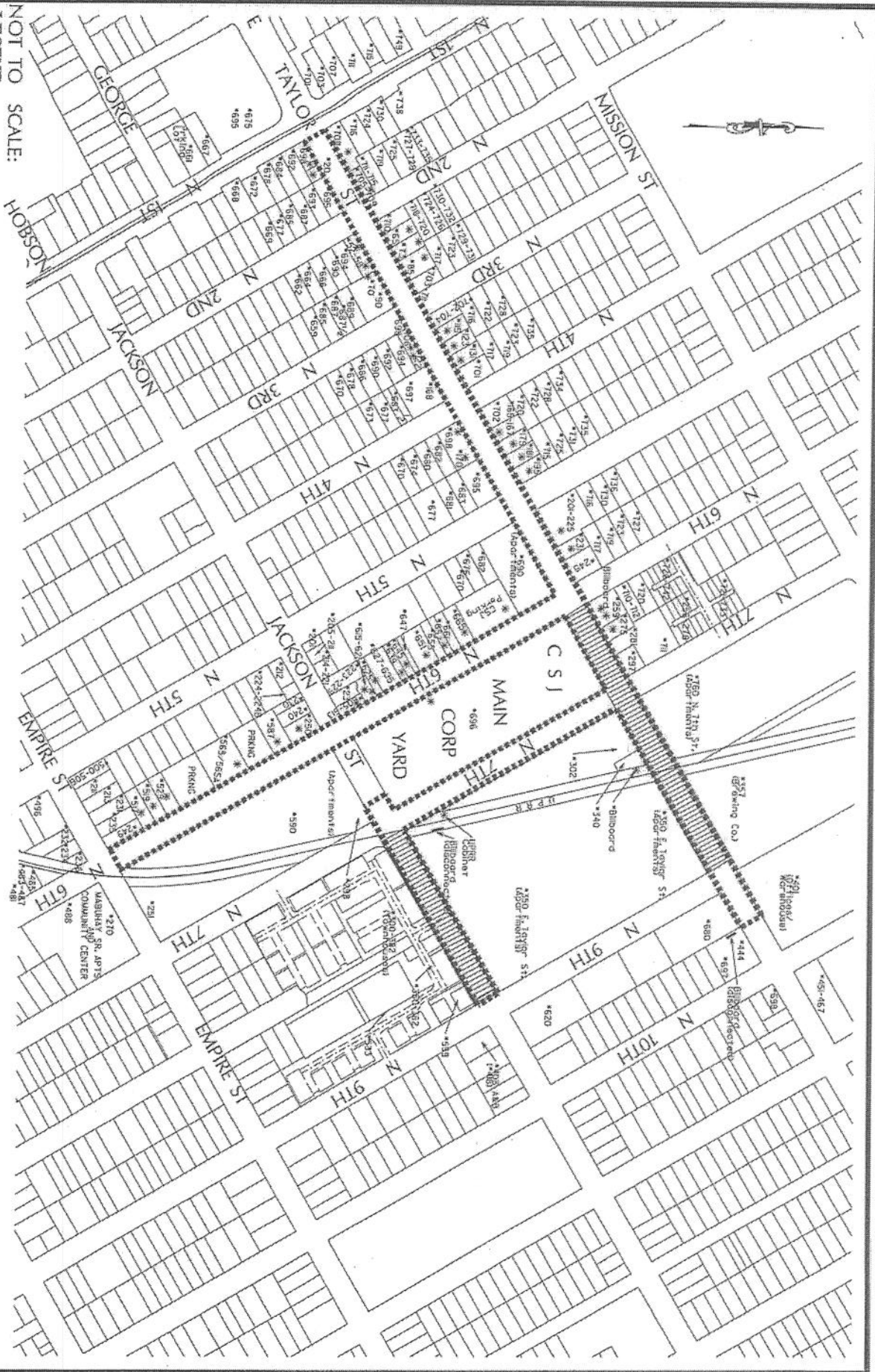


EXHIBIT A-2

**DESCRIPTION OF PROPOSED BOUNDARY OF AN UNDERGROUND
UTILITY DISTRICT AT TAYLOR STREET FROM FIRST STREET TO TENTH
STREET; JACKSON STREET FROM SEVENTH STREET TO NINTH STREET;
SEVENTH STREET FROM JACKSON STREET TO TAYLOR STREET; AND SIXTH
STREET FROM TAYLOR STREET TO EMPIRE STREET**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at a true point at the intersection of the easterly right-of-way line of North First Street and northerly right-of-way line of Taylor Street;

THENCE proceeding in a northeasterly direction 3000±' along the northerly right-of-way line of Taylor Street;

THENCE proceeding in a southeasterly direction 80±' perpendicular to the centerline of Jackson Street to intersection with the southerly right-of-way line of Taylor Street;

THENCE proceeding in a southwesterly direction 840±' along the southerly right-of-way line of Taylor Street to a point of intersection with the easterly right-of-way line of North Seventh Street;

THENCE proceeding in a southeasterly direction 810±' along the easterly right-of-way line of North Seventh Street to a point of intersection with the northerly right-of-way line of Jackson Street;

THENCE proceeding in a northeasterly direction 625±' along the northerly right-of-way line of Jackson Street to a point of intersection with the westerly right-of-way line of North Ninth Street;

THENCE proceeding in a southeasterly direction 80±' along the westerly right-of-way line of North Ninth Street to a point of intersection with the southerly right-of-way line of Jackson Street;

THENCE proceeding in a southwesterly direction 765±' along the southerly right-of-way line of Jackson Street;

THENCE proceeding in a northwesterly direction 80±' perpendicular to the centerline of Jackson Street to a point of intersection with the northerly right-of-way line of Jackson Street;

THENCE proceeding in a northeasterly direction 60±' along the northerly right-of-way line of Jackson Street to a point of intersection with the westerly right-of-way line of

North Seventh Street;

THENCE proceeding in a northwesterly direction $810\pm'$ along the westerly right-of-way line of North Seventh Street to a point of intersection with the southerly right-of-way line of Taylor Street;

THENCE proceeding in a southwesterly direction $275\pm'$ along the southerly right-of-way line of Taylor Street to a point of intersection with the easterly right-of-way line of North Sixth Street;

THENCE proceeding in a southeasterly direction $1710\pm'$ along the easterly right-of-way line of North Sixth Street to a point of intersection with the northerly right-of-way line of Empire Street;

THENCE proceeding in a southwesterly direction $80\pm'$ along the northerly right-of-way line of Empire Street to a point of intersection with the westerly right-of-way line of North Sixth Street;

THENCE proceeding in a northwesterly direction $1710\pm'$ along the westerly right-of-way line of North Sixth Street to a point of intersection with the southerly right-of-way line of Taylor Street;

THENCE proceeding in a southwesterly direction $1720\pm'$ along the southerly right-of-way line of Taylor Street to a point of intersection with the easterly right-of-way line of North First Street;

THENCE proceeding in a northwesterly direction $80\pm'$ along the easterly right-of-way line of North First Street to the true point of beginning.

EXHIBIT A-3
Staff Memorandum



COUNCIL AGENDA: 09-27-05

ITEM: 7.1

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Katy Allen

**SUBJECT: JACKSON/TAYLOR
UNDERGROUND UTILITY
DISTRICT**

DATE: 09-07-05

Approved

Date

9/16/05

Council District: 3

RECOMMENDATION

Conduct a Public Hearing and adopt an ordinance to establish a combination Rule 20A and In-Lieu Fee (Rule 20B) Underground Utility District on Taylor Street from First Street to Tenth Street; Jackson Street from Seventh Street to Ninth Street; Seventh Street from Jackson Street to Taylor Street; and Sixth Street from Taylor Street to Empire Street.

CEQA: Exempt, PP05-148.

BACKGROUND

Through the Rule 20A Underground Utility Program, the California Public Utilities Commission requires Pacific Gas and Electric Company (PG&E) to annually allocate funding to finance the undergrounding of overhead distribution facilities located on public streets within the City of San José. The California Public Utilities Commission also requires SBC, through Rule 32, to allocate funding for undergrounding where PG&E has been required to underground. Comcast is required by franchise agreement to budget funds to participate in projects where the PG&E Rule 20A and SBC Rule 32 funds are programmed.

In June 1989, Council adopted an ordinance establishing an In-Lieu Utility Undergrounding Fee Program (Rule 20B). The ordinance requires the developer to pay a fee in-lieu of completing the aerial-to-underground conversion themselves along their street frontage. The Department of Public Works then coordinates the establishment and construction of utility conversion projects in accordance with the current work plan approved by Council.

The proposed Jackson/Taylor Underground Utility District (District) is included in the 2004/05-2009/10 Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program Five Year Work Plan reported to Council on March 23, 2005. The proposed District meets the criteria established by the City to complete the undergrounding of utilities in Redevelopment or

HONORABLE MAYOR AND CITY COUNCIL

09-07-05

Subject: Jackson/Taylor Underground Utility District

Page 2

Neighborhood Business District areas and will remove aerial facilities within the proposed District boundary (map attached).

An issue unresolved is whether the project will include aboveground cabinets versus belowground vaults, and whether PG&E 20A funding is applicable for the belowground installation. This has been a key topic in two recent workshops with PG&E. The goal of the workshops is aimed at resolving obstacles to improve project delivery. The Jackson/Taylor project is being used as a pilot project to expedite and elevate the decision-making process.

Within the limits of this project, PG&E is proposing approximately nine aboveground cabinets. These cabinets would be placed on private properties, subject to property owners granting easements to PG&E. Should the easements be unobtainable, it is not yet determined whether PG&E can use Rule 20A monies or whether the City would pay for these Special Facilities. No funding source currently exists for the additional costs. The estimated cost to underground these structures is \$35,000-\$70,000. If the City is required to pay for the Special Facilities, an additional Council funding action would be necessary."

ANALYSIS

On August 31, 2005, notices of a public hearing were mailed to all utility companies, owners of property and owners adjacent to the proposed District.

A schedule for establishment and implementation of the proposed Underground Utility District is presented in Attachment B.

OUTCOMES

Approval of this ordinance will establish the Jackson/Taylor Underground Utility District in accordance with the San José Municipal Code. In addition, it will enable City staff to direct utility companies to begin design of the project. Establishment of this district will improve the appearance, pedestrian mobility and ease of utility equipment maintenance.

PUBLIC OUTREACH

A community meeting was held on July 21, 2005, by City staff to inform the public of the undergrounding project. Staff responded to questions about the project and the private property conversion process. Nine people from the community attended the meeting. Eight were property owners and one person was a member of the Japantown Business Association. Three concerns brought forth at the community meeting involved: internal wiring changes to the buildings that may involve intensive electrical work, who would be the responsible party for installation of

HONORABLE MAYOR AND CITY COUNCIL

09-07-05

Subject: Jackson/Taylor Underground Utility District

Page 3

trench on private property, and who would help coordinate the private property conversions. City staff responded that conversion work is strictly confined to the existing meter panel and no internal rewiring of the buildings would be required (unless the property owner requested an upgrade to the building's service). PG&E would be responsible for the trenching on each private property. Public Works staff was identified as the coordinator for conversion of private properties.

City staff raised the issue of PG&E's desire to obtain no-cost easements to install some of the aboveground cabinets. Attendees generally reacted negatively to the no-cost easements.

Upon City Council's approval of the ordinance at the public hearing, Public Works will mail a notice of adoption of ordinance to all utility companies, and property owners of property adjoining the proposed District.

Prior to the start of construction activities, PG&E will place "Door Hanger" construction notices on properties adjoining the proposed District and those affected by construction.

On September 26, 2005, staff will transmit a supplemental memo should any comments or protest be received for consideration at the public hearing.

COORDINATION

The establishment of the proposed District and project schedule has been coordinated with PG&E, SBC, Comcast, the San José Redevelopment Agency and the Japantown Neighborhood Association. The City Attorney's Office has reviewed the required ordinance to establish the District. This memo was coordinated with the Planning, Building and Code Enforcement Department and the City Manager's Budget Office.

COST IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: None

2. COST OF PROJECT (ESTIMATED):

COST TO UTILITIES:

PG&E Rule 20A Allocation	\$975,000
SBC Rule 32	1,200,000
Comcast	425,000
Total Cost to Utility Companies	2,600,000

HONORABLE MAYOR AND CITY COUNCIL
 09-07-05
 Subject: Jackson/Taylor Underground Utility District
 Page 4

COST TO CITY:

Project Development, Administration and Construction	
Inspection (Fund 416)	231,000
PG&E Rule 20B Agreement	325,000
Construction:	
City Facilities Conversion (20A) (Fund 429)	170,000
City Facilities Conversion (20B) (Fund 416)	24,000
Total Cost to City	750,000

TOTAL PROJECT COSTS (ESTIMATED): **\$3,350,000**

3. **SOURCE OF FUNDING:** Fund 416 - Underground Utility Fund
 Fund 429 - Building and Structure
 Construction Tax Fund
4. **FISCAL IMPACT:** This project is consistent with the Council-approved Budget Strategy for Economic Recovery section in that it will spur construction in our local economy and have no significant impact on the General Fund.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract*	2005-2006 Proposed Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs**				\$750,000			
Current Funding Available							
416	4654	Underground Utility Program	103093	\$1,741,000	0	V-107	MBA #60, 6/21/2005 Ord. No. 27474
Total Current Funding Available				\$2,112,000	0		

* Design costs of \$30,000 are anticipated in 2005-2006. In addition, remaining City project costs of \$720,000 are anticipated in FY 2006-2007 and FY 2007-2008. Funding for these remaining costs has been programmed in 2007-2008 in the 2006-2010 Adopted Traffic and Developer Assisted Projects CIP's.

HONORABLE MAYOR AND CITY COUNCIL

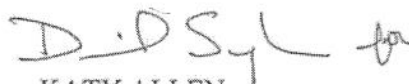
09-07-05

Subject: Jackson/Taylor Underground Utility District

Page 5

CEQA

Exempt, PP05-148.



KATY ALLEN

Director, Public Works Department

MO:CM:SK:lrea:nc

(lr082605cm.JacksonTaylor UndergroundUtility DistrictOrd.doc/util)

Attachments

ATTACHMENT B

UNDERGROUND UTILITY DISTRICT AT JACKSON/TAYLOR

Establishment Schedule

- | | |
|---------------|--|
| Aug. 30, 2005 | City Council adopts a resolution setting a time and place for a Public Hearing. |
| Aug. 31, 2005 | Director of Public Works mails a Notice of Public Hearing to all adjacent property owners. |
| Sep. 26, 2005 | Director of Public Works transmits a report of comments and/or protests received for consideration at the Public Hearing. |
| Sep. 27, 2005 | City Council conducts a Public Hearing and at its conclusion approves an Ordinance establishing an Underground Utility District on Taylor Street from First Street to Tenth Street; Jackson Street from Seventh Street to Ninth Street; Seventh Street from Jackson Street to Taylor Street; and Sixth Street from Taylor Street to Empire Street. |

Project Implementation Schedule

- | | |
|--------------|---|
| October 2005 | Utility companies begin design of substructure, conduit, vaults, electric and cable facilities. |
| July 2007 | Construction starts |
| July 2008 | Utility companies complete connections and remove overhead wires and poles. |